

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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)
In Re:) SIPA LIQUIDATION
)
BERNARD L. MADOFF INVESTMENT) No. 08-01789 (BRL)
SECURITIES LLC,) (Substantively
) Consolidated)
Debtor.)
-----)
IRVING H. PICARD, Trustee of the)
Liquidation of Bernard L. Madoff)
Investment Securities LLC,)
Plaintiff,)
vs.) Adv. Pro. No.
) 09-01182 (BRL)
J. EZRA MERKIN, GABRIEL CAPITAL,)
L.P., ARIEL FUND LTD., ASCOT)
PARTNERS L.P., GABRIEL CAPITAL)
CORPORATION,)
Defendants.)
-----)

VIDEOTAPED DEPOSITION OF STEVE POMERANTZ, Ph.D.
New York, New York
July 8, 2015

Reported by: BONNIE PRUSZYNSKI, RMR, RPR, CLR
JOB NO. 95461

1 S. Pomerantz
2 was the director of quantitative research.
3 Those are just the boundaries of
4 those titles.
5 Q So between '92 and '97, did you
6 have responsibilities outside of fixed
7 income?
8 A Yes.
9 Q What responsibilities did you have
10 outside of fixed income during that period?
11 A There is the development of fund of
12 funds inside Weiss, Peck & Greer, primarily
13 the '40 Act fund of funds.
14 Also in that time period, I am
15 involved in the due diligence of acquisitions
16 that the firm is making for both traditional
17 and alternative investment managers. I am
18 involved in the due diligence that is being
19 performed of Weiss, Peck & Greer by other
20 parties.
21 I am also the chair of the asset
22 allocation committee during that time period.
23 Q That was from '92?
24 A That was from '94 to actually 2000,
25 I was the chair of the asset allocation

1 S. Pomerantz
2 that you were involved in creating did not,
3 during the '92 to 2000 time period, invest in
4 funds outside of the Weiss, Peck & Greer
5 portfolio. Is that right?
6 A That's correct.
7 Q Then when you say -- in connection
8 with developing the Weiss, Peck & Greer fund
9 of funds that invested in Weiss, Peck & Greer
10 hedge funds, did you do due diligence on the
11 Weiss, Peck & Greer hedge funds that you were
12 investing in?
13 A Yes, but my responsibility to
14 perform due diligence on the individual hedge
15 funds is actually independent of the creation
16 of this fund of funds. My role in the firm
17 is to actually be involved in the due
18 diligence of all of the hedge fund products
19 that we have and in the -- in new hedge funds
20 that we are going to acquire.
21 Q So you perform due diligence on
22 internally managed funds; is that right?
23 A Yes.
24 Q What did that involve?
25 A Pretty much the same framework that

1 S. Pomerantz
2 committee. And in that capacity, I am
3 interfacing with all of the equity products
4 as well.
5 Q The -- you said development of a
6 fund of funds at Weiss, Peck & Greer. Could
7 you describe that for me?
8 A Weiss, Peck & Greer had a -- I
9 would -- well, it varied over time. I mean,
10 initially, it was just one, and eventually,
11 it got up to about a dozen actual hedge funds
12 or what we will call hedge funds, but at some
13 point what Weiss, Peck & Greer did was take
14 those individual hedge funds and kind of
15 merge them into another product called a fund
16 of funds, that solely invested in Weiss,
17 Peck & Greer hedge fund products.
18 Ultimately, that's a product that
19 is being targeted to different investors than
20 the actual individual hedge funds themselves.
21 Q So, you were involved in creating
22 the product that then invested in the other
23 Weiss, Peck & Greer funds; is that right?
24 A Yes.
25 Q I take it that that fund of funds

1 S. Pomerantz
2 I have identified in the report. It just
3 means different things to different funds,
4 especially when I am right next-door to the
5 hedge fund and they are my partner. There is
6 different sets of information that you have.
7 But the framework, the template is pretty
8 much what we have described in the reports.
9 Q When you say "what we have
10 described in the reports," who do you mean by
11 "we"?
12 A Mr. Weingarten and myself.
13 Q So you used the five-piece
14 framework back then in the '92 to 2000 time
15 period?
16 A Yes.
17 Q And in your view, it's always been
18 a five-piece framework?
19 A I'm not -- not wedded to the number
20 per se. The -- the ideas, the actual things
21 that are being examined, that is -- that has
22 been pretty consistent in my memory of how
23 the industry operates. I think there is
24 probably some different groupings of these
25 ideas according to different people, but as

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1 S. Pomerantz
2 far as the substance of the issues being
3 evaluated, I started this job in 1992, and I
4 was sitting in meetings with Cowen
5 Associates, Russell Investments, Wilshire
6 Associates. Their job was to evaluate Weiss,
7 Peck & Greer, and this is the framework that
8 they are engaging in as early as 1992.

9 Q The -- have you ever described it
10 as a 4P or a 3P framework?

11 A I am sure I have. The number of
12 P's is somewhat amorphous. The substance
13 remains the same. I think it just depends
14 how you want to communicate.

15 Q The -- so, when you said you are
16 sitting next-door to people, and they were
17 your partners, how did that affect the due
18 diligence process?

19 A Well, due diligence ultimately is
20 going to be defined by the information that
21 you have available to you; right? The
22 framework is -- is defined, but your ability
23 to implement is a function of the information
24 that you have at the time. And with
25 different people, you have different

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2 given situation.

3 So, in other words, somebody --
4 somebody may be in business for five years,
5 and they may have a track record, and I may
6 be able to analyze their historical track
7 record, but somebody else may just be out of
8 the box and be a totally new hedge fund, and
9 then they have no track record. So my
10 evaluation of their performance will mean
11 something different when I look at this
12 manager versus that manager, but the notion,
13 the concept of looking at performance is an
14 objective part of that process.

15 Q When you performed due diligence on
16 one of your partners as compared to
17 performing due diligence on a fund that you
18 were considering acquiring, did you do
19 anything differently?

20 A Well, again, if they are a partner,
21 if they are a part of Weiss, Peck & Greer, I
22 have access to all of their records. I know
23 their trading. I know what their
24 transactions are. I know what their trades
25 are. I can go talk directly to the head

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2 information.

3 If I am acquiring somebody, if I am
4 negotiating with an outside hedge fund and I
5 am trying to acquire them, or I may be
6 talking to a hedge fund that has no track
7 record that doesn't exist, but somebody that
8 I want to ultimately seed and start up, or
9 somebody could be a partner of my -- Weiss
10 Peck & Greer is a partnership, so a lot of
11 the people who work there are partners, and
12 they have ongoing businesses that they have
13 been managing their funds for years.

14 So there is different levels of
15 information that I am getting from all of
16 these different people.

17 Q Would you agree that due diligence
18 is a flexible process?

19 A I guess I don't -- there are
20 aspects -- I don't know what you mean by the
21 process. I would like to think that the
22 process is objective and the process is well
23 defined by what Weingarten and I have said.
24 The actual implementation of it is going to
25 be constrained by the particulars of any

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2 trader at Weiss, Peck & Greer and get
3 information.

4 If I am trying to acquire someone
5 and they are using Goldman Sachs as a prime
6 broker, well, I can talk to Goldman Sachs,
7 but Goldman Sachs is clearly not going to
8 tell me the same things that the head trader
9 at Weiss, Peck & Greer is going to tell me.

10 So, again, there is differences
11 based on every situation.

12 Q Why would the -- why would Goldman
13 Sachs not tell you the same things that the
14 head trader at Weiss, Peck & Greer would tell
15 you?

16 A Because Goldman Sachs is a private
17 company, and there are limits to what they
18 need to communicate to the public.

19 (Discussion held off the record.)

20 BY MR. STEINER:

21 Q The -- so, you said when you were
22 at Weiss, Peck & Greer, when you were
23 performing due diligence on your partners,
24 you had access to basically more information,
25 and a lot more information, than on a fund

1 S. Pomerantz
2 applied to every single investment, because
3 it couldn't be applied to every single
4 investment. Certain strategies lend
5 themselves to certain types of analyses, and
6 other strategies don't. And even strategies
7 that will lend themselves to a certain type
8 of investment might not be -- you might not
9 have the ability to implement them if you
10 don't have the data.

11 So, this is a report of the due
12 diligence that could have been performed at
13 that time based upon the data available at
14 that time regarding a strategy like this.

15 Q Maybe I just misunderstood
16 something, because that was a lengthy report,
17 and it was probably late when I was reading
18 it. But the -- I understood you to be
19 opining that these analytics were industry
20 standards that had to be applied during this
21 time period to due diligence of a hedge fund
22 or an investment advisor.

23 MR. SHEEHAN: Object to the form.

24 Q Did I miss something?

25 A That is not what I just answered

1 S. Pomerantz
2 you.

3 Q Okay. I'm talking about what I
4 understood your report to say, not what your
5 testimony was, so --

6 A No. My report discusses the due
7 diligence that could have been performed at
8 this time regarding an investment like BLMIS
9 for someone who had access to the data that
10 Mr. Merkin had access to. Had Mr. Merkin
11 chosen to engage in due diligence, according
12 to my objective framework, according to the
13 industry's objective framework, this is what
14 he could have discovered.

15 Q These are tests that he could have
16 run?

17 A I would like to call them tools,
18 just because that's what I am used to. But
19 yes, that's my -- I mean, there is a basket
20 of tools that are available to someone like
21 Mr. Merkin at this time. And these are --
22 these tools could be applied to that
23 investment.

24 There are other tools that could be
25 applied to other investments, but these are

1 S. Pomerantz
2 all tools that have direct application to a
3 BLMIS-type investment.

4 Q So, now let me make sure I
5 understand. If I understand correctly, what
6 you are saying is that the industry standard
7 was the framework, the five P's; is that
8 right?

9 A Yes.

10 Q In your opinion?

11 A Yes.

12 Q And then there are lots of
13 different ways to go about implementing,
14 developing the information you need in the
15 five different P's; is that right?

16 A I mean the five P's are the
17 objective standard, and then it is incumbent
18 on a fiduciary to accomplish the due
19 diligence into each of those P's to the
20 extent that data and tools are available, and
21 circumstances warrant.

22 Q What do you mean by "circumstances
23 warrant"?

24 A Well, let's take BLMIS as an
25 example. Perhaps what is being offered up as

1 S. Pomerantz
2 an explanation for the performance is this
3 notion of market timing. One can perform
4 objective assessment on that notion. Is that
5 what is going on in the portfolio? Is the
6 portfolio trying to engage in market timing?
7 And if it is, is it being successful or not
8 at doing that?

9 That is something that would apply
10 here. That will not apply to every hedge
11 fund. I just mentioned the WPG Software Fund
12 as an example. Market timing would not be an
13 issue. That portfolio was always 100 percent
14 invested. If it ever held cash, it's because
15 the portfolio manager did not have any
16 opportunities to invest in, but not because
17 he was trying to be defensive with respect to
18 how the market might perform.

19 Q And you said something about the
20 data that was available. Could you elaborate
21 on that for me?

22 A Sure. As an example of data that
23 was available to Mr. Merkin, I would cite
24 transaction records, actual confirmations of
25 trades and the transcription of those

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2 Q I take it it's your opinion that
3 that does not require in every circumstance
4 performing various quantitative analyses that
5 you have done in your report.

6 A The only reason you wouldn't was if
7 you couldn't, it was physically impossible,
8 or if the analyses that I offer here are not
9 useful or applicable to a particular
10 strategy, or you have been able to confirm
11 information through some other method or
12 mechanism that I don't know about it.

13 I don't know how you can confirm
14 certain things without actually going through
15 these analyses. Perhaps there are other
16 analyses that people will go through. I'm
17 not aware of them. I have never seen them.
18 These are all the standard types of analyses
19 that people go through to confirm certain
20 things.

21 Q Going back to the software fund,
22 the WPG Software Fund, as an example, you had
23 transaction-level data available to you;
24 right?

25 A I did.

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2 Q When you were doing due diligence
3 on that fund?

4 A Yes.

5 Q And so, you could have gone back
6 and looked at trade confirmations; right?

7 A I would have no need to do that.
8 There was nothing about that particular
9 strategy that was contingent upon the
10 execution ability.

11 Q So, you could have done it. You
12 just concluded that you didn't need to.

13 A Actually, you know, I take that
14 back. That actually implicitly was done
15 within the analysis. Within the performance
16 attribution framework, it would have
17 identified certainly types of -- it would
18 have identified some of the types of things
19 that are identified in this report.

20 Even though transaction-level
21 detail really is not relevant for that
22 particular strategy, the performance
23 attribution that was performed would
24 actually -- did actually identify certain
25 analyses that were transaction level, but

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2 they were never significant.

3 Q Did you go and look at individual
4 trade confirmations in your due diligence of
5 the software fund?

6 A No, I didn't look at confirmations,
7 but I will give you as an example, I was
8 aware of where the fund traded relative to
9 VWAP. I was aware of that. And it just
10 didn't move me one way or another as being
11 significant. It didn't raise a red flag. It
12 didn't seem significant to me at all as far
13 as my understanding of that particular hedge
14 fund strategy, although implicitly, it's
15 actually being calculated, but that's just
16 because the software is doing it.

17 Q Have you ever looked at trade
18 confirmations as part of your due diligence?

19 A Actually, in a variety of the tax
20 shelter cases that I dealt with, the
21 confirmations were actually -- were actually
22 specifically looked at, and a variety of my
23 opinions actually centered around things that
24 were on the confirmations or that were not on
25 the confirmations that should have been.

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2 Q Those were confirmations of equity
3 trades?

4 A Yeah. They actually were
5 confirmations of equity trades, and there was
6 actually information on the trades that
7 should have been there and wasn't there, and
8 that was -- that was actually a part of my
9 opinion. It was a small piece, but it was
10 actually a part of the opinion.

11 Q Okay. What information should have
12 been there in the tax shelter cases that
13 wasn't?

14 A In those particular cases -- in
15 those particular cases, the stock was being
16 purchased on a forward basis, and there would
17 have been an implied interest rate, and on
18 the confirmation, there was actually a box
19 that said interest, in anticipation of a
20 forward settlement, and there was a zero in
21 that box, when there actually should have
22 been a real value. The confirmation actually
23 did not represent the actual amount of money
24 that was supposed to move pursuant to that
25 stock transaction.

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2 I mean, there were a host of other
3 red flags and issues, but actually in that
4 particular matter, there was an issue with
5 the confirmations, and I did identify it as
6 part of my due diligence of the transaction.

7 Q Well, you didn't do due diligence
8 of the transaction in the tax shelter cases;
9 right?

10 A Yes, I did.

11 Q You did due diligence in connection
12 with someone entering the transaction?

13 A I did due diligence -- I actually
14 discussed the due diligence -- there were a
15 variety of partners involved in these
16 transactions, but there is a small piece of
17 the transaction where an investment advisor
18 is actually facilitating the execution of a
19 particular strategy, and my opinions had to
20 do with the due diligence that was being
21 performed by the investment advisor regarding
22 the totality of that transaction.

23 Q So, in those cases, who -- what
24 brokerage firm issued the confirmations?

25 A They were mainly coming from banks

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1 S. Pomerantz
2 like UBS or Deutsche Bank, were the two large
3 banks that were involved.

4 Q And those large banks issued faulty
5 confirmations?

6 A I don't want to say faulty. I'm
7 not here to assign value judgments or blames.
8 Part of my opinion was -- had to do with
9 information that was on the confirmation,
10 that should have been on the confirmation,
11 could have been on the confirmation. I put
12 that information into my reports. In some
13 cases, cases settled. In some cases, the
14 courts opined as a result of litigation, and
15 it was what it was.

16 Q What were the court opinions?

17 A You could read Bemont versus United
18 States of America. You could read New
19 Phoenix versus Commissioner of the IRS.
20 There is one other case that is in bankruptcy
21 court, and the plaintiff is listed on my CV.

22 Q So back to my question, which was:
23 In connection with your due diligence of any
24 investment advisor or hedge fund, have you
25 ever reviewed trade confirmations?

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1 S. Pomerantz
2 A Well, I just gave you examples in a
3 litigation context.

4 Q Right. So, my question is: In
5 your due diligence of -- in your performing
6 due diligence on an investment advisor or
7 hedge fund manager, have you ever reviewed
8 trade confirmations?

9 A No. I reviewed transaction-level
10 data, and I would input transaction-level
11 data into systems to perform certain
12 analyses. But I -- I never had a need to
13 look at the confirmations.

14 Q So, you never asked to look at
15 confirmations in any of the due diligence
16 that you have done over the last 20 years?

17 A I was never -- I never had a need
18 to do that.

19 Q And in your -- in due diligence --
20 by the way, when you referred to your work as
21 an expert in the tax shelter cases as due
22 diligence, that was always a review after the
23 fact after a challenge by the IRS; correct?

24 A Yes.

25 Q Okay. So in your work performing

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1 S. Pomerantz
2 due diligence on investment advisors or hedge
3 funds, have you -- have you had occasion
4 to -- strike that.

5 In your work performing due
6 diligence on hedge fund managers or on
7 investment advisors, have you ever compared
8 on a transaction-by-transaction basis
9 transaction price versus the daily high-low
10 range? Has that been something you have done
11 in your due diligence work?

12 A I have looked at transaction prices
13 against VWAP, but I have not looked at
14 transactions versus highs and lows. But I
15 have looked against VWAP as part of my due
16 diligence.

17 Q Why haven't you looked at
18 transactions versus highs and lows as part of
19 your due diligence?

20 A I never had a reason to.

21 Q And I take it you don't believe
22 that the due diligence that you have
23 performed has been faulty for not having
24 looked at that; correct?

25 A It depends on the circumstances.

<p style="text-align: right;">Page 182</p> <p>1 S. Pomerantz</p> <p>2 support a firm.</p> <p>3 Q Going back to the example of the</p> <p>4 Goldman Sachs employee who manages a</p> <p>5 discretionary account for high net worth</p> <p>6 individuals, are you familiar with a</p> <p>7 traditional model where that person, whether</p> <p>8 you call it a broker or an investment</p> <p>9 advisor, was compensated based on the</p> <p>10 commissions that were generated for the</p> <p>11 accounts?</p> <p>12 A I mean, there are and have been</p> <p>13 some people in the industry who get</p> <p>14 compensated that way. I mean, I can't speak</p> <p>15 to any specifics.</p> <p>16 Q So, you are familiar with the fact</p> <p>17 that it happens?</p> <p>18 A I have heard these people exist.</p> <p>19 They don't interface with the institutional</p> <p>20 marketplace, but I know they exist.</p> <p>21 Q And you don't know how big that</p> <p>22 market is or was?</p> <p>23 A It doesn't interface with the</p> <p>24 institutional marketplace. You are not</p> <p>25 hiring a broker. You are not going to pay</p>	<p style="text-align: right;">Page 183</p> <p>1 S. Pomerantz</p> <p>2 somebody to generate trades.</p> <p>3 Q You -- you refer in your report to</p> <p>4 the AIMA guidelines.</p> <p>5 A Yes.</p> <p>6 Q And the first one, the first AIMA</p> <p>7 due diligence questionnaire I think was</p> <p>8 created in 1997; is that right?</p> <p>9 A Yes.</p> <p>10 Q And prior to that, there hadn't</p> <p>11 been an industry due diligence?</p> <p>12 A Well, I think there have always</p> <p>13 been people who maintained their own. I</p> <p>14 mentioned earlier companies like Russell,</p> <p>15 Cowen and Wilshire. These are people who</p> <p>16 have been doing diligence from probably the</p> <p>17 time I was born, and they -- they have their</p> <p>18 own proprietary approaches to due diligence.</p> <p>19 AIMA saw itself as in a position to</p> <p>20 basically provide some codification of that</p> <p>21 for people who did not have the internal</p> <p>22 resources to develop their own.</p> <p>23 Q And you are familiar with the AIMA</p> <p>24 guidelines?</p> <p>25 A The due diligence questionnaires?</p>
<p style="text-align: right;">Page 184</p> <p>1 S. Pomerantz</p> <p>2 Q The questionnaires.</p> <p>3 A Yes.</p> <p>4 Q And am I right that those</p> <p>5 questionnaires don't refer to or describe any</p> <p>6 quantitative analysis that is required to be</p> <p>7 performed as part of the due diligence?</p> <p>8 A I don't know what you mean by that.</p> <p>9 They don't identify specific quantitative</p> <p>10 analyses, although sometimes they will say,</p> <p>11 such as X, Y, Z, but they will all address</p> <p>12 the need for quantitative analysis when</p> <p>13 applicable.</p> <p>14 Q When you say "when applicable,"</p> <p>15 what do you mean by that?</p> <p>16 A Well, again, it depends upon the</p> <p>17 strategy that you are involved in, and</p> <p>18 whether or not you have any historical data.</p> <p>19 If you take a new fund that is going to be</p> <p>20 fundamentally based, and there is no track</p> <p>21 record, well, you are not going to be able to</p> <p>22 do quantitative analysis if nothing exists.</p> <p>23 (Pomerantz Exhibit 3, 1997</p> <p>24 Guidelines marked for identification, as</p> <p>25 of this date.)</p>	<p style="text-align: right;">Page 185</p> <p>1 S. Pomerantz</p> <p>2 Q I am going to hand you what I have</p> <p>3 marked as Pomerantz Exhibit 3, which I</p> <p>4 believe is the 1997 guidelines that you refer</p> <p>5 to in your report. Is that right?</p> <p>6 A Yes.</p> <p>7 Q And you are familiar with those</p> <p>8 guidelines?</p> <p>9 A Yes.</p> <p>10 Q So -- so, I guess if we could for</p> <p>11 starters, if you could point me to what</p> <p>12 provisions in there specify examples of the</p> <p>13 quantitative analysis that should be</p> <p>14 performed.</p> <p>15 A Well, there are a variety of points</p> <p>16 here. If you go to the bottom of page three,</p> <p>17 there is a discussion of drawdown, which is</p> <p>18 something that they suggest you be aware of</p> <p>19 and to identify them, and to understand why</p> <p>20 they happened. That is a quantitative issue.</p> <p>21 A discussion of the capacity of</p> <p>22 your strategy, and the markets that you trade</p> <p>23 in, that is a quantitative issue.</p> <p>24 A lot of these questions here are</p> <p>25 answered through quantitative metrics. There</p>

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1 S. Pomerantz
2 A I would put it in the thousands.
3 Q And you understand that the list
4 that is attached to your report includes
5 many, many multiples of that number?
6 A Yes.
7 Q Why did you include all of the
8 pages that you didn't review?
9 A I -- those are documents that were
10 reviewed by other people that didn't have
11 information that was relevant to my opinions.
12 Q Did you maintain a list of the
13 pages that you actually reviewed?
14 A No.
15 Q Did you keep any records of which
16 pages you actually reviewed in forming your
17 opinions?
18 A No.
19 Q And if someone else reviewed the
20 page and determined it wasn't relevant to
21 your opinion, is that -- do you equate that
22 with you having reviewed the page?
23 A Well, no. When I say that I
24 reviewed a thousand pages, that is a thousand
25 pieces of paper or 2,000 pieces of paper that

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2 I looked at. Other people may have looked at
3 other pages, told me what was in them, and I
4 would conclude that those weren't relevant
5 for what I needed.
6 Q But you certainly didn't review
7 tens of thousands of pages in connection with
8 issuing your report; correct?
9 A I did not. Like as an example,
10 there are statements that -- there are
11 monthly statements that identified
12 transactions and holdings. Somebody was
13 responsible for looking at every single one,
14 but it wasn't me. I did look at a subset so
15 that I understand what those statements are,
16 and the information that is on them, but I
17 did not look at every single one of them.
18 Q And you have testified enough times
19 to know that, and issued expert reports
20 enough to know that one of your
21 responsibilities as an expert is to disclose
22 the documents that you considered in
23 connection with your -- issuing your report;
24 correct?
25 A Yes.

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1 S. Pomerantz
2 Q And so, if you look at Schedule A
3 to appendix two.
4 A Yes.
5 Q That is the list of documents that
6 you provided and annexed to the report that
7 you signed as to the documents that you
8 considered in forming your opinions; correct?
9 A Yes.
10 Q But you didn't personally review or
11 consider all of these documents; correct?
12 A That's correct.
13 Q So, if I wanted to know which
14 documents you considered, how would I make
15 that determination?
16 A I think that I reviewed personally
17 documents that are a part of the opinions
18 that I am offering, so, if there is an
19 analysis here about transactions, I have
20 looked at a subset of all of the documents
21 that discuss transactions.
22 I can't tell you which ones I
23 looked at. You know, if there are 30,000
24 confirmations, I could tell you I looked at
25 ten, but I couldn't tell you which ten of

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2 those 30,000.
3 Q You didn't keep track?
4 A No.
5 Q And you didn't feel that that was
6 important to do?
7 A I -- no, I don't see the relevance
8 of it.
9 Q No one asked you to keep track of
10 what documents you actually reviewed?
11 A No.
12 Q And you said if there were 30,000
13 confirmations, you looked at something like
14 ten?
15 A I personally may have looked at ten
16 to -- someone -- yeah, I personally looked at
17 ten to confirm that what I am being told
18 about the confirmations is -- is accurate.
19 For example, I have talked about how the
20 confirmations are backwards. The buyer is
21 the seller, or the seller is identified as
22 the buyer. Have I looked at 30,000
23 transactions, to tell you that I have noticed
24 that on 30,000? No, I haven't. But I have
25 looked at ten, and I have seen that on the

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2 ten that I have looked at.
3 Q And you say -- when you say the
4 transactions are backwards, that's because
5 the confirmation, instead of a confirmation
6 you might get from your Vanguard trading that
7 says you bought or sold, says we sold when
8 the customer bought; right?
9 A Yes.
10 Q And you have no doubt that -- and
11 in your experience in the industry, you
12 haven't come across confirmations where when
13 it's labeled "we" as opposed to "you," it's
14 written from the broker's perspective?
15 A Doesn't happen.
16 Q You would -- you don't have any
17 reason to doubt that Mr. Merkin or his back
18 office understood whether the transaction was
19 a buy or a sell; right?
20 A I think that they understood what
21 it was. But what they understood, and I
22 am -- right. I think they understood what it
23 was because they understood that they were
24 buying stocks and selling calls and buying
25 puts. So, I know they understood that. But

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2 a piece of paper that contradicts our mutual
3 understanding, we are both going to be
4 confused by that, and that's okay, but we are
5 going to resolve that confusion.
6 Q And if the sheet of paper -- if I
7 give you a sheet of paper that says I bought,
8 you would understand that to be you sold;
9 correct?
10 A If the confirmation says counselor
11 bought, then I will understand that to mean
12 Pomerantz sold.
13 Q And no confusion there?
14 A There is no confusion.
15 Q By the way, are you familiar with a
16 distinction between principal trades and
17 agency trades?
18 A Yes.
19 Q Okay. And what's the difference?
20 A It would depend on whether the
21 stock was held in inventory by the
22 broker-dealer or whether the broker-dealer
23 was acting as an intermediary to somebody
24 else who owned the shares.
25 Q And why -- how would the answer

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2 the confirmation is still backwards.
3 Q And do you understand that if I say
4 I bought something from you, that is the
5 equivalent of saying you sold something to
6 me?
7 A Yes, that is true.
8 Q And there is no confusion in that;
9 right?
10 A It depends if -- if -- the
11 confusion is, if you say you bought, and the
12 implication is that I sold, and there is a
13 piece of paper that says that I bought, that
14 would be very confusing to me. It would mean
15 that the confirmation disagrees with my
16 understanding of the trade.
17 And that indeed does happen.
18 People do have miscommunications about
19 whether they are buying or selling and what
20 the price is and what the notional is, and
21 it's why conversations get tape-recorded, and
22 it's why people cancel and correct trades,
23 because at times there is miscommunication.
24 But if you say something to me, and
25 I understand what you say, and then there is

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2 differ in those two circumstances?
3 A It wouldn't. Under either
4 circumstance, Merkin is the person who is
5 buying stock; right? We -- this is a
6 separate account; right? So Merkin owns the
7 assets. Merkin is buying the stock. Whether
8 I am buying it directly from BLMIS or if I am
9 buying it indirectly from BLMIS through --
10 well, through BLMIS, but from Goldman, that
11 is irrelevant to me. What is relevant is
12 that I am buying the stock under either of
13 those two scenarios.
14 Q By the way, you understand that
15 it's not Merkin who is buying the stock, it's
16 Ascot Partners who is buying the stock;
17 correct?
18 A I'm sorry, yes.
19 Q And so, in your example, the first
20 would be a principal trade and the second
21 would be an agency trade?
22 A Yes.
23 Q Do you understand that the broker
24 is compensated in a different way for a
25 principal trade versus an agency trade?